

Calendar No. 553

98TH CONGRESS
1ST SESSION

S. 1324

[Report No. 98-305]

To amend the National Security Act of 1947 to regulate public disclosure of information held by the Central Intelligence Agency.

IN THE SENATE OF THE UNITED STATES

MAY 18 (legislative day, MAY 16), 1983

Mr. GOLDWATER (for himself, Mr. THURMOND, Mr. D'AMATO, and Mr. NICKLES) introduced the following bill; which was read twice and referred to the Select Committee on Intelligence

NOVEMBER 9 (legislative day, NOVEMBER 7), 1983

Reported by Mr. GOLDWATER, with an amendment in the nature of a substitute
[Strike out all after the enacting clause and insert the part printed in *italic*]

A BILL

To amend the National Security Act of 1947 to regulate public disclosure of information held by the Central Intelligence Agency.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 ~~That this Act may be cited as the "Intelligence Information~~
- 4 ~~Act of 1983".~~

1 FINDINGS AND PURPOSES

2 SEC. 2. (a) The Congress finds that—

3 (1) the Freedom of Information Act is providing
4 the people of the United States with an important
5 means of acquiring information concerning the work-
6 ings and decisionmaking processes of their Govern-
7 ment, including the Central Intelligence Agency;

8 (2) the full application of the Freedom of Informa-
9 tion Act to the Central Intelligence Agency is, howev-
10 er, imposing unique and serious burdens on this
11 agency;

12 (3) the processing of a Freedom of Information
13 Act request by the Central Intelligence Agency nor-
14 mally requires the search of numerous systems of
15 records for information responsive to the request;

16 (4) the review of responsive information located in
17 operational files which concerns sources and methods
18 utilized in intelligence operations can only be accom-
19 plished by senior intelligence officers having the neces-
20 sary operational training and expertise;

21 (5) the Central Intelligence Agency must fully
22 process all requests for information, even when the re-
23 quester seeks information which clearly cannot be re-
24 leased for reasons of national security;

1 (6) release of information out of operational files
2 risks the compromise of intelligence sources and
3 methods;

4 (7) eight years of experience under the amended
5 Freedom of Information Act has demonstrated that this
6 time-consuming and burdensome search and review of
7 operational files has resulted in the proper withholding
8 of information contained in such files. The Central In-
9 telligence Agency should, therefore, no longer be re-
10 quired to expend valuable manpower and other re-
11 sources in the search and review of information in
12 these files;

13 (8) the full application of the Freedom of Informa-
14 tion Act to the Central Intelligence Agency is per-
15 ceived by those who cooperate with the United States
16 Government as constituting a means by which their co-
17 operation and the information they provide may be dis-
18 closed;

19 (9) information concerning the means by which in-
20 telligence is gathered generally is not necessary for
21 public debate on the defense and foreign policies of the
22 United States, but information gathered by the Central
23 Intelligence Agency should remain accessible to re-
24 questers, subject to existing exemptions under law;

1 (10) the organization of Central Intelligence
2 Agency records allows the exclusion of operational files
3 from the search and review requirements of the Free-
4 dom of Information Act while leaving files containing
5 information gathered through intelligence operations
6 accessible to requesters, subject to existing exemptions
7 under law; and

8 (11) the full application of the Freedom of Infor-
9 mation Act to the Central Intelligence Agency results
10 in inordinate delays and the inability of these agencies
11 to respond to requests for information in a timely
12 fashion.

13 (b) The purposes of this Act are—

14 (1) to protect the ability of the public to request
15 information from the Central Intelligence Agency
16 under the Freedom of Information Act to the extent
17 that such requests do not require the search and
18 review of operational files;

19 (2) to protect the right of individual United States
20 citizens and permanent resident aliens to request infor-
21 mation on themselves contained in all categories of
22 files of the Central Intelligence Agency; and

23 (3) to provide relief to the Central Intelligence
24 Agency from the burdens of searching and reviewing
25 operational files, so as to enable this agency to respond

1 to the public's requests for information in a more
2 timely and efficient manner.

3 SEC. 3. (a) The National Security Act of 1947 is
4 amended by adding at the end thereof the following new title:
5 ~~"TITLE VII—RELEASE OF REQUESTED INFORMA-~~
6 ~~TION TO THE PUBLIC BY THE CENTRAL IN-~~
7 ~~TELLIGENCE AGENCY~~

8 ~~"DESIGNATION OF FILES BY THE DIRECTOR OF CENTRAL~~
9 ~~INTELLIGENCE AS EXEMPT FROM SEARCH, REVIEW,~~
10 ~~PUBLICATION, OR DISCLOSURE~~

11 ~~"SEC. 701. (a) In furtherance of the responsibility of the~~
12 ~~Director of Central Intelligence to protect intelligence~~
13 ~~sources and methods from unauthorized disclosure as set~~
14 ~~forth in section 102(d)(3) of this Act (50 U.S.C. 403(d)(3))~~
15 ~~and section 6 of the Central Intelligence Agency Act of 1949~~
16 ~~(50 U.S.C. 403g), operational files located in the Directorate~~
17 ~~of Operations, Directorate for Science and Technology, and~~
18 ~~Office of Security of the Central Intelligence Agency shall be~~
19 ~~exempted from the provisions of the Freedom of Information~~
20 ~~Act which require publication or disclosure, or search or~~
21 ~~review in connection therewith, if such files have been spe-~~
22 ~~cifically designated by the Director of Central Intelligence to~~
23 ~~be concerned with—~~

1 “(1) the means by which foreign intelligence,
2 counterintelligence, or counterterrorism information is
3 collected through scientific and technical systems;

4 “(2) foreign intelligence, counterintelligence, or
5 counterterrorism operations;

6 “(3) investigations conducted to determine the
7 suitability of potential foreign intelligence, counterintel-
8 ligence, or counterterrorism sources; and

9 “(4) intelligence or security liaison arrangements
10 or information exchanges with foreign governments or
11 their intelligence or security services;

12 *Provided, however,* That nondesignated files which may con-
13 tain information derived or disseminated from designated
14 operational files shall be subject to search and review. The
15 inclusion of information from operational files in nondesignat-
16 ed files shall not affect the designation of the originating
17 operational files as exempt from search, review, publication,
18 or disclosure: *Provided further,* That the designation of any
19 operational files shall not prevent the search and review of
20 such files for information concerning any special activity the
21 existence of which is not exempt from disclosure under the
22 provisions of the Freedom of Information Act.

23 “(b) The provisions of subsection (a) of this section shall
24 not be superseded except by a provision of law which is en-

1 acted after the date of enactment of subsection (a), and which
2 specifically cites and repeals or modifies its provisions.

3 “(c) Notwithstanding subsection (a) of this section,
4 proper requests by United States citizens, or by aliens law-
5 fully admitted for permanent residence in the United States,
6 for information concerning themselves, made pursuant to the
7 Privacy Act of 1974 (5 U.S.C. 552a) or the Freedom of In-
8 formation Act (5 U.S.C. 552), shall be processed in accord-
9 ance with those Acts.”

10 (b) The table of contents at the beginning of such Act is
11 amended by adding at the end thereof the following:

~~“TITLE VII—RELEASE OF REQUESTED INFORMATION TO THE
PUBLIC BY THE CENTRAL INTELLIGENCE AGENCY~~

~~“Sec. 701. Designation of files by the Director of Central Intelligence as exempt
from search, review, publication, or disclosure.”~~

12 ~~SEC. 4. The amendments made by section 3 shall be~~
13 ~~effective upon enactment of this Act and shall apply with~~
14 ~~respect to any requests for records, whether or not such re-~~
15 ~~quest was made prior to such enactment, and shall apply to~~
16 ~~all cases and proceedings pending before a court of the~~
17 ~~United States on the date of such enactment.~~
18 *That this Act may be cited as the “Intelligence Information*
19 *Act of 1983”.*

20 *FINDINGS AND PURPOSES*

21 *SEC. 2. (a) The Congress finds that—*

22 *(1) the Freedom of Information Act is providing*
23 *the people of the United States with an important*

1 *means of acquiring information concerning the work-*
2 *ings and decisionmaking processes of their Govern-*
3 *ment, including the Central Intelligence Agency;*

4 *(2) the full application of the Freedom of Infor-*
5 *mation Act to the Central Intelligence Agency is, how-*
6 *ever, imposing unique and serious burdens on this*
7 *Agency;*

8 *(3) the processing of a Freedom of Information*
9 *Act request by the Central Intelligence Agency normal-*
10 *ly requires the search of numerous systems of records*
11 *for information responsive to the request;*

12 *(4) the review of responsive information located in*
13 *operational files which concerns sources and methods*
14 *utilized in intelligence operations can only be accom-*
15 *plished by senior intelligence officers having the neces-*
16 *sary operational training and expertise;*

17 *(5) the Central Intelligence Agency must fully*
18 *process all requests for information, even when the re-*
19 *quester seeks information which clearly cannot be re-*
20 *leased for reasons of national security;*

21 *(6) release of information out of operational files*
22 *risks the compromise of intelligence sources and*
23 *methods;*

24 *(7) eight years of experience under the amended*
25 *Freedom of Information Act has demonstrated that this*

1 *time-consuming and burdensome search and review of*
2 *operational files has resulted in the proper withholding*
3 *of information contained in such files, and, therefore,*
4 *the Central Intelligence Agency should no longer be re-*
5 *quired to expend valuable manpower and other re-*
6 *sources in the search and review of information in*
7 *these files;*

8 *(8) the full application of the Freedom of Infor-*
9 *mation Act to the Central Intelligence Agency is per-*
10 *ceived by those who cooperate with the United States*
11 *Government as constituting a means by which their co-*
12 *operation and the information they provide may be*
13 *disclosed;*

14 *(9) information concerning the means by which*
15 *intelligence is gathered generally is not necessary for*
16 *public debate on the defense and foreign policies of the*
17 *United States, but information gathered by the Central*
18 *Intelligence Agency should remain accessible to re-*
19 *questers, subject to existing exemptions under law;*

20 *(10) the organization of Central Intelligence*
21 *Agency records allows the exclusion of operational files*
22 *from the search and review requirements of the Free-*
23 *dom of Information Act while leaving files containing*
24 *information gathered through intelligence operations*

1 *accessible to requesters, subject to existing exemptions*
2 *under law; and*

3 *(11) the full application of the Freedom of Infor-*
4 *mation Act to the Central Intelligence Agency results*
5 *in inordinate delays and the inability of the Agency to*
6 *respond to requests for information in a timely fashion.*

7 *(b) The purposes of this Act are—*

8 *(1) to protect the ability of the public to request*
9 *information from the Central Intelligence Agency*
10 *under the Freedom of Information Act to the extent*
11 *that such requests do not require the search and review*
12 *of operational files;*

13 *(2) to protect the right of individual United States*
14 *citizens and permanent resident aliens to request infor-*
15 *mation on themselves contained in all categories of files*
16 *of the Central Intelligence Agency; and*

17 *(3) to provide relief to the Central Intelligence*
18 *Agency from the burdens of searching and reviewing*
19 *operational files, so as to improve protection for intelli-*
20 *gence sources and methods and enable this Agency to*
21 *respond to the requests of the public for information in*
22 *a more timely and efficient manner.*

23 *SEC. 3. (a) The National Security Act of 1947 is*
24 *amended by adding at the end thereof the following new title:*

1 "TITLE VII—RELEASE OF REQUESTED IN-
2 FORMATION TO THE PUBLIC BY THE CEN-
3 TRAL INTELLIGENCE AGENCY

4 "DESIGNATION OF FILES BY THE DIRECTOR OF CENTRAL
5 INTELLIGENCE AS EXEMPT FROM SEARCH, REVIEW,
6 PUBLICATION, OR DISCLOSURE

7 "SEC. 701. (a) In furtherance of the responsibility of
8 the Director of Central Intelligence to protect intelligence
9 sources and methods from unauthorized disclosure as set
10 forth in section 102(d)(3) of this Act (50 U.S.C. 403(d)(3))
11 and section 6 of the Central Intelligence Agency Act of 1949
12 (50 U.S.C. 403g), operational files located in the Directorate
13 of Operations, Directorate for Science and Technology, and
14 Office of Security of the Central Intelligence Agency shall be
15 exempted from the provisions of the Freedom of Information
16 Act which require publication or disclosure, or search or
17 review in connection therewith, if such files have been specifi-
18 cally designated by the Director of Central Intelligence to
19 be—

20 "(1) files of the Directorate of Operations which
21 document foreign intelligence or counterintelligence op-
22 erations or intelligence or security liaison arrange-
23 ments or information exchanges with foreign govern-
24 ments or their intelligence or security services; or

1 “(2) files of the Directorate for Science and Tech-
2 nology which document the means by which foreign in-
3 telligence or counterintelligence is collected through sci-
4 entific and technical systems; or

5 “(3) files of the Office of Security which docu-
6 ment investigations conducted to determine the suitabil-
7 ity of potential foreign intelligence or counterintelli-
8 gence sources:

9 *Provided, however, That nondesignated files which may con-*
10 *tain information derived or disseminated from designated*
11 *operational files shall be subject to search and review. The*
12 *inclusion of information from operational files in nondesig-*
13 *nated files shall not affect the designation of the originating*
14 *operational files as exempt from search, review, publication,*
15 *or disclosure: Provided further, That the designation of any*
16 *operational files shall not prevent the search and review of*
17 *such files for information concerning any special activity the*
18 *existence of which is not exempt from disclosure under the*
19 *provisions of the Freedom of Information Act or for informa-*
20 *tion reviewed and relied upon in an investigation by the in-*
21 *telligence committees of the Congress, the Intelligence Over-*
22 *sight Board, the Office of General Counsel of the Central*
23 *Intelligence Agency, the Office of Inspector General of the*
24 *Central Intelligence Agency, or the Office of the Director of*
25 *Central Intelligence for any impropriety, or violation of law,*

1 *Executive order, or Presidential directive in the conduct of*
2 *an intelligence activity.*

3 “(b) *The provisions of this section shall not be superseded*
4 *except by a provision of law which is enacted after the date*
5 *of enactment of this section and which specifically cites and*
6 *repeals or modifies its provisions.*

7 “(c) *Notwithstanding subsection (a) of this section,*
8 *proper requests by United States citizens, or by aliens law-*
9 *fully admitted for permanent residence in the United States,*
10 *for information concerning themselves, made pursuant to the*
11 *Privacy Act of 1974 (5 U.S.C. 552a) or the Freedom of*
12 *Information Act (5 U.S.C. 552), shall be processed in ac-*
13 *cordance with those Acts.*

14 “(d) *The Director of Central Intelligence shall promul-*
15 *gate regulations to implement this section.*

16 “(1) *Such regulations shall require the appropriate*
17 *Deputy Directors or Office Head to—*

18 “(A) *specifically identify categories of files under*
19 *their control which they recommend for designation;*

20 “(B) *explain the basis for their recommendations;*
21 *and*

22 “(C) *set forth procedures consistent with the stat-*
23 *utory criteria in subsection (a) which would govern the*
24 *inclusion of documents in designated files.*

1 *Recommended designations, portions of which may be classi-*
2 *fied, shall become effective upon written approval of the Di-*
3 *rector of Central Intelligence.*

4 “(2) *Such regulations shall further provide procedures*
5 *and criteria for the review of each designation not less than*
6 *once every ten years to determine whether such designation*
7 *may be removed from any category of files or any portion*
8 *thereof. Such criteria shall include consideration of the his-*
9 *torical value or other public interest in the subject matter of*
10 *the particular category of files or portion thereof and the po-*
11 *tential for declassifying a significant part of the information*
12 *contained therein.*

13 “(e)(1) *On the complaint under section 552(a)(4)(B) of*
14 *title 5, United States Code, that the Agency has improperly*
15 *withheld records because of improper designation of files or*
16 *improper placement of records solely in designated files, the*
17 *review of the district court, notwithstanding any other provi-*
18 *sion of law shall be limited to a determination whether the*
19 *Agency regulations implementing subsection (a) conform to*
20 *the statutory criteria set forth in that subsection for designat-*
21 *ing files unless the complaint is supported by an affidavit,*
22 *based on personal knowledge or otherwise admissible evi-*
23 *dence, which makes a prima facie showing that—*

24 “(A) *a specific file containing the records request-*
25 *ed was improperly designated; or*

1 “(B) the records requested were improperly placed
2 solely in designated files.

3 If the court finds a prima facie showing has been made under
4 this subsection, it shall order the Agency to file a sworn re-
5 sponse, which may be filed in camera and ex parte, and the
6 court shall make its determination based upon these submis-
7 sions and submissions by the plaintiff. If the court finds
8 under this subsection that the regulations of the Agency im-
9 plementing subsection (a) of this section do not conform to the
10 statutory criteria set forth in that subsection for designating
11 files, or finds that the Agency has improperly designated a
12 file or improperly placed records solely in designated files,
13 the court shall order the Agency to search the particular des-
14 ignated file for the requested records in accordance with the
15 provisions of the Freedom of Information Act and to review
16 such records under the exemptions pursuant to section 552(b)
17 of title 5, United States Code. If at any time during such
18 proceedings the Agency agrees to search designated files for
19 the requested records, the court shall dismiss the cause of
20 action based on this subsection.

21 “(2) On complaint under section 552(a)(4)(B) of title 5,
22 United States Code, that the Agency has improperly with-
23 held records because of failure to comply with the regulations
24 adopted pursuant to subsection (d)(2), the review of the court

1 *shall be limited to determining whether the Agency consid-*
2 *ered the criteria set forth in such regulations.”.*

3 *(b) The table of contents at the beginning of such Act is*
4 *amended by adding at the end thereof the following:*

*“TITLE VII—RELEASE OF REQUESTED INFORMATION TO THE
PUBLIC BY THE CENTRAL INTELLIGENCE AGENCY*

*“Sec. 701. Designation of files by the Director of Central Intelligence as exempt
from search, review, publication, or disclosure.”.*

5 *SEC. 4. The amendments made by section 3 shall be*
6 *effective upon enactment of this Act and shall apply with*
7 *respect to any request for records, whether or not such request*
8 *was made prior to such enactment, and shall apply to all*
9 *cases and proceedings pending before a court of the United*
10 *States on the date of such enactment.*

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